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UNITED STATES OF AMERICA.



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IMPEACHMENT OF THE PRESIDENT.

The House having under consideration the resolution reported from the Committee on Reconstruction for the impeachment of the President—

Mr. JONES said :

Mr. SPEAKER : We are indeed rapidly making eventful history ; we hear it said even in the streets that we are in the midst of revolution. This Congress has swiftly gone from one extreme to another in violations of the Constitution, and this House having failed before on grave charges, now proposes to impeach the President of the United States on a mere pretext, as suddenly seized upon as it is unwarrantable and preposterous.

The last hours of this arbitrary debate on so important a proposition are closing upon us, and we have hardly time to collect our thoughts, much less to express them. May we not stay this impetuous prosecution for a moment and take an example from history ? Impeachment is the most solemn procedure that ever engaged a deliberative assembly. Warren Hastings, a mere subject of the crown and appointee as Governor General of India, was impeached before the British House of Lords. His trial itself lasted one hundred and forty-seven days, and the case, from its inception to its close, occupied the Parliament, from time to time, through a series of seven long years. The master minds of England—Burke and Pitt and Fox and Sheridan and Windham and Earl Grey—exhausted their powers on this great case, and Edmund Burke, in one of the most marked efforts of forensic eloquence the world has known, alone occupied four days in its delivery. In his closing speech he said :

"My lords, I have done ! The part of the Commons is concluded. With a trembling hand we consign the product of these long, long labors to your charge. Take it ! Take it ! It is a sacred trust ! Never before was a cause of such magnitude submitted to any human tribunal. A business which has so long occupied the councils of Great Britain cannot possibly be hurried over in the course of vulgar, trite, and transitory events. Nothing but some of those great revolutions that break the traditional chain of human memory, and alter the very

face of nature itself, can possibly obscure it. My lords, we are all elevated to a degree of importance by it. The meanest of us will by means of it become more or less the concern of posterity. It has pleased Providence to place us in such a state that we appear every moment to be on the verge of some great mutation. There is one thing, and one thing only, that defies mutation—that which existed before the world itself. I mean justice; that justice which, emanating from the Divinity, has a place in the breast of every one of us, given us for our guide with regard to ourselves and with regard to others, and which will stand after this globe is burned to ashes our advocate or our accuser before the great Judge, when he comes to call upon us for the tenor of a well-spent life."

This long extract is only pardonable because of its fitness to the present occasion. I commend these memorable words to this House. What deliberation ! what solemnity was there invoked by the mighty spirit of a mighty age ! But what do we behold here, sir, and in this case ? The Chief Magistrate of one of the greatest nations on earth, without crime or misdemeanor or the shadow of either, but really for the faithful discharge of his sworn duty to the Constitution, and for vindicating his own self-respect and official dignity, to be accused, tried, convicted, and deposed, as is threatened by his prosecutors, in the short space of ten days. Compare the two cases. Is not this indeed a commentary upon the wisdom, the dignity, and the justice of an American Congress ? "O tempora ! O mores !" The day too, sir, on which this proceeding was begun, the period in our history, the circumstances which surround us, all so inappropriate for such business, only serve to illustrate the relentless ardor and blind fanaticism which control the majority in this House. On that day, the natal anniversary of the Father of his Country, when the American people are accustomed to assemble together and celebrate it in glittering marches, delightful measures, and joyous pastimes by day and in bonfires and illuminations by night ; when this Capitol itself in its peerless beauty and grandeur should have been an object of fraternal visitation, and the scene of mutual exchanges of proud and grate-

ful emotions, we were required to sit here day and night listening to vain and empty declamation, the reiteration of unfounded and gratuitous charges against one who I believe has acted in the conscientious discharge of his duty and in zeal, public justice, and patriotism is no unfit successor of the immortal Washington. Consider the period in our history. A great war has just desolated our land; the people of ten States are denied representation in both Houses of Congress; their civil government has been stricken down; every vestige of constitutional liberty has been wrenched from them, and they are placed in a great degree under the domination of their former slaves. Their structure of society, their civilization, in a word, has been upturned and destroyed. They are leveled to the dust, appealing to us for liberal laws and the permission to obey them; their manhood only preventing them from appealing for the bread of life for which, indeed, they are suffering.

Those rich States which contributed over three hundred millions in staples alone to the annual wealth of the country are prostrate, impoverished, and despairing under military rule. Their commerce is lost, their markets are destroyed, and ruin stalks abroad through their fields and cities. The people of the North are compelled not only to bear their own heavy burdens of taxation, but must also make up the deficit of the non-producing South, and sustain, besides the costly Government which rules it, a despotism as dark and absolute as that which overshadows Poland. See, too, the condition of our people in the northern States themselves; their financial embarrassment, the stagnation in trade and commerce, the tenantless workshops, the idle laborers in every vocation of life; indeed, squalid poverty meeting us at every step we take in the streets that lead from the Capitol. They appeal to us day by day and hour by hour in petitions and otherwise, and almost cry out with uplifted hands for us to do something to relieve the country from the distress and impending ruin which everywhere seem apparent. And yet, in this alarming crisis in our affairs, we are to turn a deaf ear to these appeals, stop the wheels of legislation, and go into the impeachment of the Executive without law, cause, or decency. A trial, rather a stupendous farce, involving much valuable time and perhaps millions of the hard-earned treasure of a tax-burdened and suffering people. Inadequate preparation for debate, the gag put upon the minority, and the scene carried on with a levity and a ribaldry better becoming charlatans than the legislators of a brave and patriotic people. What, sir! in the name of God and our country for what? Simply to remove all obstacle to their desperate machinations; to gratify hate and vengeance, and to preserve power in the hands of a ruthless majority.

I call aloud upon the people to turn their eyes to the Capitol to see what is being enacted in this high place of the nation, to look to their public servants, whether they are properly exercising the great trusts committed to them, or are guilty of base subterfuges and monstrous abuses of power. Can, oh! can the Republic much longer stand this strain upon its vital energies?

But what, sir, is the case before us? what the offense committed by the President, or what the charge preferred against him? He has simply attempted to remove a Cabinet officer. Had he not the right, and was it not his duty to do so? This question is of a two-fold character. Let us briefly examine it. All power in our Government, whether legislative, executive, or judicial, is derived from the Constitution, its fundamental law. That Constitution was the work of master minds, who having scrutinized the more liberal forms of civil polity which had existed in Greece and Rome and Carthage, and throughout the succeeding ages, especially the models of the Batavian and Helvetic confederacies—the only examples which remained of former republics—after all drew their best and wisest lessons from the British constitution, which was pronounced by the celebrated Montesquieu to be the “mirror of political liberty.” Upon this, with such modifications and improvements as the wisdom and experience of our great statesmen suggested, was founded the Federal Constitution. It is a congregation solely of delegated powers, and establishes a compound system of government. Its powers are divided under three great heads, legislative, executive, and judicial, separate and distinct, equal and coördinate, and by the maintenance of each in its integrity depends the very existence of the whole. It is in this triple harmony, this political trinity, if I may so speak, that consists the beauty, the virtue, and the glory of our Federal system. This happy equilibrium of the forces of government was the result of all the learning of our fathers, and it was to establish this in absolute verity that they examined so closely and steered so narrowly between all the models before them.

Montesquieu says:

“When the legislative and executive powers are united in the same person or body there can be no liberty.”

Madison says:

“It will not be denied that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it.”

Again he says:

“In order to lay a due foundation for that separate and distinct exercise of the different powers of Government which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own.”

Hamilton says:

“An absolute or qualified negative in the execu-

tive upon the acts of the legislative body is admitted by the ablest adepts in political science to be an indispensable barrier against the encroachments of the latter upon the former."

Washington says, in his Farewell Address:

"The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism."

Such is the language of a great lawgiver, of the chief authors of the Constitution itself, and of the Father of his Country. But what does the instrument itself say:

"The executive power shall be vested in a President of the United States.

"He shall take care that the laws be faithfully executed, and shall commission all the officers of the United States."

He solemnly swears that he will, faithfully execute the office of President, and will to the best of his ability preserve, protect, and defend the Constitution of the United States.

After these opinions and this, the written organic law, who can doubt that the President had the right to perform the very act for which he is accused? The power to remove from office would seem naturally and logically to follow the power to appoint, but the Constitution has required that the appointment by the President of ambassadors, other public ministers and consuls, judges of the Supreme Court, and other officers of the United States whose appointments are not otherwise provided for, shall be sanctioned "by the advice and consent of the Senate;" but mark, however, that the power of the President to remove any of the above mentioned officials, except those whose removal is provided for by impeachment, and among whom are not the heads of the Executive Departments, was in no manner restrained or qualified. It was deemed to be inherent in the very nature of his office and in its proper execution. But fortunately upon this point we are not left to cavil or conjecture. The question, after being freely and fully discussed at an early period in the legislative branch of the Government, and by many of the authors of the Constitution themselves, was expressly settled. It arose in the House of Representatives in 1789, on a bill for establishing the Department of Foreign Affairs, in which the direct question of the removal of its chief officer by the President came up; which, indeed, involved the exercise of that power in all the subordinate departments under the executive branch of the Government. Without the time to allude even partially to the able arguments of those who participated in this debate, I conceive that no better summary and conclusion upon its whole scope can be adduced than an extract from the speech of Mr. Madison, who was its master spirit. He said:

"The question now resolves itself into this: is the power of displacing an executive power? I con-

ceive that if any power whatsoever is in the Executive it is the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his executive power, to make such appointment? Should we be authorized, in defiance of that clause in the Constitution, 'The executive power shall be vested in the President' to unite the Senate with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first one is authorized by being excepted out of the general rule established by the Constitution in these words: 'The executive power shall be vested in the President.'

This, then, is the general rule. An exception was made in the power of appointing but none in the power of removing; therefore it remained absolute.

The question was thereupon decided in the House of Representatives by a vote of 34 to 20 and in the Senate by the casting vote of the Vice President. But this principle is still further vindicated by a decision of the Supreme Court in 1830 in the case *ex parte Herren*. That court there held that—

"No one denied the power of the President and Senate jointly to remove when the tenure of office was not fixed by the Constitution, which was a full recognition of the principle that the power of removal was incident to the power of appointment; but it was very early adopted as a practical construction of the Constitution that this power was vested in the President alone, and such would appear to have been the legislative construction of the Constitution, for, in the organization of the three great Departments of State, War, and Treasury, in 1789, provision was made for the appointment of a subordinate officer by the head of the Department who should have charge of the records, books, and papers appertaining to the office *when the head of the Department should be removed from office by the President of the United States*.

The Navy Department was not established till 1798, and the court held substantially that its chief officer existed under the same tenure as the other Secretaries and was removable by the President, thus recognizing the principle that the power of removal was vested in the President *alone* in such cases, although the appointment of the officer is by the President and Senate.

Here, then, we have the emphatic decision of the legislative and the judiciary, two of the three coördinate branches of the Government.

Now, if we can unite with these in judgment and practice the executive branch our argument is complete and the position of President Johnson thoroughly sustained. Here it is most timely and aptly illustrated. On the 12th May, 1800, John Adams peremptorily removed, while the Senate was in session, the Secretary of State, Timothy Pickering, as appears by the following letter:

12th May, 1800.

SIR: Divers causes and considerations essential to the administration of the Government in my judg-

ment requiring a change in the Department of State, you are hereby discharged from any further services as Secretary of State.

JOHN ADAMS,

President of the United States.

To TIMOTHY PICKERING, Philadelphia.

Subsequently he nominated John Marshall as Secretary of State in place of Mr. Pickering, and the Senate had no other notice. Can it be necessary to add anything more?

Our most learned and distinguished commentators upon the Federal Constitution and laws, Justice Story and Judge Kent, in discussing this question, referring to these decisions, consider the whole matter as settled and aequiesced in by the Government and the people. Removal from office in his subordinate departments has ever been the undisputed practice of the Executive, and was especially manifested in the splendid administration of General Jackson, and in the language of Daniel Webster in a case involving the same principle:

"Thus has the important question been settled by construction, settled by precedent, settled by the practice of the Government, and settled by statute."

But Congress, not satisfied with this repeatedly-settled constitutional power, and wishing to make the executive authority subservient to the legislative, on the 2d March, 1867, passed the tenure-of-office bill. That bill, none can doubt, is, in its provisions, violative of the Constitution and the decisions and authorities referred to. The President promptly put upon it his veto, and I have yet to see the respectable, unbiased authority which denies the reason and the justice of his constitutional prohibition.

In this act he was supported by the opinion of every member of his Cabinet, and no one of them expressed his abhorrence of the bill with so much emphasis as this now valiant knight of the War Office, Edwin M. Stanton. Indeed, such was the ability with which he desecrated upon its odious provisions that the President desired him to prepare his veto, which only press of business denied him that pleasure. The bill, however, becomes a law, at least we will so consider it for the purposes of the argument, and we are now told that the President has violated it, and in doing which he has been guilty of high crimes and misdemeanors, sufficient to warrant his impeachment and removal from office. His accusers base the entire charge of this violation upon a single provision of the bill; it is this:

"Be it enacted, &c., That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified except as herein otherwise provided: Provided, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General and the Attorney General, shall

hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

Who can doubt that here is a provision and exception that the Secretaries of State, of the Treasury, of War, of the Navy, of the Interior, the Postmaster General, and the Attorney General, are not included within the scope and meaning of this bill, but are in its spirit and letter expressly exempted? And such was the expressed opinion of the author and the supporters of the bill at the time of its passage in the Senate. They were to hold their offices respectively for and during the term of the President by whom they were appointed and for one month thereafter. It only remains, then, to determine by whom and for whose term the Secretary of War, Edwin M. Stanton, was appointed. Who denies that he was appointed by Abraham Lincoln, and therefore could only hold his office for Lincoln's term and one month thereafter, except by the reappointment or mere sufferance of President Johnson? Could language be plainer, could fact be more patent? He bears no commission from Johnson, and has only retained the place of Secretary of War through the too patient endurance of that President.

But, to spin out sophistry refined, it is claimed by some that Lincoln's term has not expired, and we must therefore tolerate the official life of the dignitary Stanton, if indeed he naturally abides for four years and one month thereafter. Is Lincoln dead, or does he still live? Can dead men hold office and administer human affairs? Had we not a Tyler administration and a Fillmore administration; and is not this the administration of Andrew Johnson, who succeeded to the Presidency as they did? To assume that this is the term of Lincoln is to reject the laws of nature and to belie the evidence of our own senses. The term of the office and the term of the officer are very different things; the one is fixed by law, the other depends upon the life, the removal, or resignation of the officer. The provision in the bill did not refer to the term of the office, but to "the term of the President," the officer who then held it.

This strained construction is but another manifestation of radical frenzy and desperation. President Johnson, then, in the attempt to remove Mr. Stanton, has in no manner violated this law in its strict letter and bearing; but if he had, what more can be made of it than that in the exercise of a high prerogative he had chosen to act in accordance with previous laws of Congress, which had been confirmed by the Supreme Court, rather than of this which he had vetoed, and the constitutionality of which had not been passed upon?

Had he not the right, too, to test a law the validity of which he and his Cabinet and the most learned of the land had at least doubted? This right inures to the humblest citizen of the Republic. In the attempt to displace Mr. Stanton, and to install General Lorenzo Thomas, do not all the attending circumstances go to show that the President simply intended to present the question for judicial investigation and settlement? Some on the other side of the House have said, with apparent soberness and even awful gesture, that it was the intention of the President to use the Army to override the laws and strike down the liberties of the people. Did he send General Thomas to the War Office with an army at his back, or even the smallest squad of soldiers? Not an individual accompanied him; he went solitary and alone. It was purely an unostentatious, quiet, civil proceeding, by which, under proper forms of law, to elicit the judgment of the highest court of the Government upon this much-vexed question. Why could not Congress have allowed this to be done? Was it not necessary for a proper discharge of the duties of the Executive and for the peace and harmony of the country? But to deprive the act of all criminal intent or the slightest disposition to disobey even this law the President, being thwarted in his effort with General Thomas, soon sends into the Senate the name of Thomas Ewing as Secretary of War.

This would seem to be the whole case in its legal aspect. What right has been infringed, what liberty destroyed, what law violated by the President?

But there is a section of this tenure-of-office bill upon which the President is to be impeached that bears in the right direction. Section five provides—

"That if any person shall, contrary to the provisions of this act, accept any appointment to, or employment in any office, or shall hold or exercise, or attempt to hold or exercise, any such office or employment, he shall be deemed, and is hereby declared, to be guilty of a high misdemeanor, and upon trial and conviction thereof he shall be punished therefor by a fine not exceeding \$10,000, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court."

Now, do not the facts and circumstances of this case show, and has it not been proven, that Mr. Stanton himself "attempts to hold or exercise" the office of Secretary of War "contrary to the provisions of this act" and without the shadow of authority, and would it not be a righteous judgment that he should suffer the penalties here prescribed and be required for this as well as other and even *graver* crimes to look out for long years from the loathsome dungeons of the Dry Tortugas?

Was it not the President's duty to remove him? How could he "take care that the laws be faithfully executed" unless there was harmony of sentiment in all the Executive Departments, and especially between him and those

who are so near to him—the heads of Departments? They are the members of his official family, with whom there ought to be free and daily intercourse and among whom there must be concurrence of opinion in order promptly and properly to execute the laws. Mr. Stanton had differed essentially with the President, had openly opposed his policy, and had become obnoxious, odious, politically and personally, to him and his Cabinet. He might have often exclaimed to him, in the language of the indignant Cicero, pointing to the conspirator of his country's liberties:

"Quousque tandem abutere, Catalina, patientia nostra?"

How long, indeed, had he abused their patience?

After much tolerance he was politely invited to retire, but invitation and hints, amounting to insult to a proud man, having no effect, he was finally ejected and the head of the Army placed in his stead "*ad interim*." This "silent monitor" for a time with seeming fidelity discharged the duties of the office, but at length, in an hour when we thought not, betraying the confidence of his chief, suddenly evacuates and lets in this scorned and cast-out official, with the Senate at his heels. Did ever audacity mount higher? Was ever Executive so outraged both as to personal and official dignity?

The President, with that caution and calmness characteristic of the man, for a time bears this monstrous encroachment; but who thought that he would long submit to it? Who doubted that he would persevere in the exercise of his prerogatives, and that he would again attempt to remove this detestable obstacle to the execution of the laws. General Thomas is dispatched to take charge of the office, and this creeping, eringing thing, this "*Caliban of the Tempest*," obsequiously submits, and only asks time to gather up his effects. The General, with the courtesy of a soldier, grants his request and retires. After a reasonable time he returns, but only to find this brazen interloper surrounded by soldiers and on a throne, as it were, of bristling bayonets.

Look, Mr. Speaker, at the War Department to-day, sir, and you see armed soldiers standing around in squads and pacing their measured lines, guarding this would-be official, who, in Falstaffian pomp and heroic mockery, whiles away the sunny hours, and at night, I am told, swings his execrable limbs in a hammock, doubtless trembling, shivering, lest the rightful authority should enter in and scowl and hurl him into the streets.

Such, sir, is the spectacle now presented in the capital of a great country, famed for the supremacy of the civil over the military authority, for proper subordination in its several departments, and for a just and wise administration of the laws. Is the reputation or the life of Edwin M. Stanton worth so much that the blood of the nation should stand still and

the whole system be endangered even for a moment in this controversy?

But, sir, the fiat has gone forth; right or wrong, wicked or worthy, the President is to be impeached. He is abused, stigmatized, anathematized without measure, but he reckons not of the slanderous missiles that are hurled at his head. He sits calm and wise as Ulysses in the Grecian tent. The people will, I trust, and posterity, I am sure, will, vindicate his acts. His highest eulogy has been pronounced by himself when, in maintaining the act complained of, he said: "If I had been fully advised that in thus defending the trust committed to my hand my own removal was sure to follow I could not have hesitated, actuated by public considerations of the highest character." This sentence will go down the ages to come. I know, sir, how vain are my words and all our efforts, our appeals, protestations, and votes. Party supremacy must be maintained at all hazards; the revolution must go on and bear down in its sweep all obstacles to its accomplishment. There has been a Spanish inquisition; there has been a French revolution, and it might not be amiss if some would bring to memory the fate of a Danton, a Robespierre, and a Marat.

I might remind gentlemen of their solemn obligations on this occasion as conservators of the peace, the laws, and liberty of the country. But what are constitutions and laws and oaths when the fires of revolution are still blazing and its wheels fast rolling on?

I commend to these swift accusers the significant prophecy of Gouverneur Morris, who put into shape and penned this Constitution of ours; and I bid them beware that they do not now signally verify it:

"But, after all, what does it signify that men should have a written Constitution containing unequivocal provisions and limitations? The legislative lion will not be entangled in the meshes of a logical net. The Legislature will always make the power which it wishes to exercise. Attempts to restrain it by other means will only render it more outrageous. The idea of binding legislators by oaths is puerile. Having sworn to exercise the powers granted according to their true intent and meaning, they will, when they

feel a desire to go further, avoid the shame if not the guilt of perjury by swearing the true intent and meaning to be, according to their comprehension, that which suits their purpose."

Sir, gentlemen tell us that we may not even warn them of their evil deeds or of the popular wrath to come. They avow that valiant men will sustain their action if necessary on the battle-field; each equal to two or three of any who may oppose them. Vain threats! fanatical delusions!

I do warn them, sir, that the spirit of liberty may still lurk in the bosoms of the sturdy yeomanry of this land, and if provoked too far a million of men will spring to arms to defend their rights and to ward off a merciless despotism. I might here, without arrogance, speak for a hundred thousand riflemen of Kentucky, who would be united as one man in the contest, equal in courage, strength, and skill to the best the world has produced. I admonish gentlemen that they may not much longer enjoy the luxury of this Belshazzar feast. The handwriting may already be faintly seen upon the wall; they have been weighed in the balance and found wanting. Sir, the people of this great country, if they are not dead to shame and dishonor, if they have a spark of the valor of their revolutionary sires, will not submit to these accumulated wrongs and outrages; no; rather they will rise up in the full magnitude and majesty of their power, and come, if need be, like avalanches from the mountains, like hurricanes from the valleys, like the swelling waters of mighty rivers, like the surges of the lakes and the billows of the sea, even to this Capitol, batter down these doors, drive out those servants who have so misused their authority, purge and cleanse these Halls, possess that tribune and altar, and place in these seats true and faithful sentinels, who, they and their successors, shall guard forever the rich heritage which their fathers have bequeathed to them.

I yield the remainder of my time to the gentleman from Pennsylvania, [Mr. BOYER.]







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